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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2009-0084]

RIN 0579-AD56

Importation of Litchi Fruit from Australia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow, under certain conditions, the importation of commercial shipments of litchi fruit from Australia into the continental United States, except Florida. As a condition of entry, the litchi fruit would have to be grown in production areas that are registered with and monitored by the national plant protection organization of Australia and treated with irradiation at a dose of 400 gray for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, and subject to inspection. The fruits would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that the conditions for importation have been met. Additionally, litchi would not be imported into or distributed to the State of Florida, due to the presence of litchi rust mite in Australia. This action would allow for the importation of litchi fruit from Australia into the continental United States, except Florida, while continuing to provide protection against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to
<http://www.regulations.gov/#!documentDetail;D=APHIS-2009-0084-0001>.
- Postal Mail/Commercial Delivery: Send your comment to Docket
No. APHIS-2009-0084, Regulatory Analysis and Development, PPD, APHIS, Station
3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0084> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy C. Wayson, Regulatory Coordination Specialist, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737-1231; (301) 734-0772.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart--Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-54, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Australia has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh litchi fruit (Litchi chinensis Sonn.) from Australia to be imported into the continental United States. As part of our evaluation of Australia's request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and risk management document may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT or viewed on the Regulations.gov Web site or in our reading room (see ADDRESSES above for a link to Regulations.gov and information on the location and hours of the reading room).

As part of our evaluation of that request, we prepared a PRA titled "Importation of Fresh Litchi, Litchi chinensis Sonn. Fruit from Australia into the Continental United States" (November 2008). That PRA evaluates the risks associated with the importation of litchi fruit with up to 5 millimeters of stem into the continental United States from Australia. The threshold allowing for a maximum of 5 millimeters of stem on the imported litchi fruit was included in Australia's request and therefore established as the allowable limit in the PRA.

The PRA identified 15 pests of quarantine significance present in Australia that could be introduced into the United States through the importation of litchi fruit, including 3 fruit flies, 7 lepidopteran pests, 2 scales, 2 insect pests, and 1 mite.

Fruit flies:

Jarvis's fruit fly (Bactrocera jarvisi).

Queensland fruit fly (Bactrocera tryoni).

Mediterranean fruit fly (Ceratitis capitata).

Lepidopteran pests:

Yellow peach moth (Conogethes punctiferalis).

Litchi fruit moth (Cryptophlebia ombrodelta).

Orange fruit borer (Isotenes miserana).

The moth Cateremna quadriguttella.

Bright cornelian (Deudorix diovis).

Dull cornelian (Deudorix epijarbas dido).

Flower caterpillar (Phycita leucomilta).

Scales:

Red wax scale (Ceroplastes rubens).

Green scale (Coccus viridis).

Insect pests:

Spherical mealybug (Nipaecoccus viridis).

Passionvine mealybug (Planococcus minor).

Mite:

Litchi hairy mite (Aceria litchii).

Proposed Systems Approach

Based on the risk management document, APHIS has determined that measures beyond the standard port of arrival inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow the importation of litchi from Australia into the United States only if they are produced in accordance with a systems approach to mitigate pest risk as outlined below. We are proposing to add the systems approach to the regulations in a new § 319.56-55 governing the importation of litchi from Australia.

Place of Production Requirements

Paragraph (a) of proposed § 319.56-55 would require that litchi fruit be grown in approved places of production that are registered with and monitored by the NPPO of Australia.

Treatment

Paragraph (b) of proposed § 319.56-55 would require that litchi fruit be treated with a minimum absorbed irradiation dose of 400 gray in accordance with the provisions of § 305.9 and the PPQ Treatment Manual (table 3-8-1). This is the established generic dose for all insect pests except pupae and adults of the order Lepidoptera. Seven of the insect pests of concern, yellow peach moth, litchi fruit moth, orange fruit borer, the moth Cateremna quadriguttella, bright cornelian, dull cornelian, and flower caterpillar, belong to the order Lepidoptera, and the 400 gray dose is not approved to treat pupae and adults of the order Lepidoptera. However, the life stages of concern for these pests are the eggs and the larvae, because the eggs and the larvae of these species are internal feeders and thus difficult to detect through inspection; the 400 gray dose is approved to treat those stages of the life cycle for Lepidoptera pests. The pupae and adults of these species are external feeders, and we are confident that inspection can detect them. Within part 305, § 305.9 contains a number of other requirements for irradiation treatment, including monitoring by APHIS inspectors and safeguarding of the fruit. Treatment could be conducted at an approved facility in Australia or in the United States.

Paragraph (c) would require that each shipment of fruit be accompanied by a phytosanitary certificate issued by the NPPO of Australia containing an additional declaration stating that the conditions for importation have been met.

Distribution restrictions

The required irradiation treatment would not mitigate the risks posed by the litchi hairy mite (Aceria litchii), and because of the mite's microscopic size, inspection alone is not considered sufficient to mitigate the risk of introduction into the United States. Based on the distribution and reported host range of this pest, we estimate it could establish in the continental United States in USDA Plant Hardiness Zones 9 through 11. Neither of its two hosts, longan or litchi, occur naturally in the United States; however, both litchis and longans are commercially grown in the State of Florida and the climatic conditions in Florida present the highest risk for establishment of the pest. For this reason, our regulations generally prohibit the movement of litchi into Florida from areas where the litchi hairy mite is present. Litchi from China, India, and Thailand that are imported under § 319.56-13 and § 319.56-47, respectively, are also not allowed to be imported or distributed in Florida.

Because the litchi hairy mite is not present in Florida and because we have consistently prohibited host movement into Florida from areas where that pest is present, we propose to prohibit the importation and distribution of litchi from Australia into the State of Florida. Accordingly, paragraph § 319.56-55 (d) would stipulate that all cartons of litchi would have to be stamped "Not for importation into or distribution in FL."

Commercial Shipments

Paragraph (e) would state that only commercial consignments of litchi fruit would be allowed to be imported. Produce grown commercially is less likely to be infested with plant pests than noncommercial shipments. Noncommercial shipments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial shipments,

as defined in § 319.56-1, are shipments of fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Identification of a particular shipment as commercial is based on a variety of indicators, including, but not limited to, the quantity of produce, the type of packaging, identification of a grower or packinghouse on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Commercially produced fruit in Australia are already subjected to standard commercial cultural and post-harvest practices that reduce the risk associated with plant pests. While not specifically required by this proposal, standard cultural practices other than the twice yearly application of broad spectrum fungicides (e.g., the regular use of sanitation measures, irrigation, fertilization, and pest control) help to further ensure that the pests of concern do not follow the pathway. All export orchards are registered production sites with traceback capability. Harvested fruit is moved to the packinghouses in a manner that would preclude reinfestation by pests. Culling of blemished and damaged fruit occurs in the field and during the post-harvest commercial processing of the fruit.

The regulations in § 319.56-3 provide that all imported fruits and vegetables shall be inspected, and shall be subject to such disinfection at the port of first arrival as may be required by an inspector. The pre-export inspection conducted by APHIS personnel as part of preclearance activities in the country of export typically serves to satisfy the inspection requirement. Section 319.56-3 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with plant pests that an inspector determines that it cannot be cleaned or treated. We believe that the proposed conditions described above, as well as all other applicable requirements in § 319.56-3, would be adequate to prevent the introduction

of plant pests into the continental United States, except Florida, with litchi fruit imported from Australia.

The proposed conditions described above for the importation of litchi fruit from Australia into the continental United States, except Florida, would be added to the fruits and vegetables regulations as a new § 319.56-55.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

This proposed rule is in response to a request from Australia to export fresh litchis to all States in the United States except Florida. Litchi is grown in Florida, Hawaii, and California, and U.S. production is estimated to be about 500 metric tons (MT) per year. Based on available information, most, if not all, litchi farms are small entities.

The United States imports litchis from such countries as Taiwan, China, Israel, and Mexico. Australia expects to export about 400 MT of litchis to the United States annually. This amount is equivalent to less than 3 percent of the quantity of litchis that was imported by the United States in 2004, the latest year for which we have data. Most likely, the quantity of litchis

expected to be imported from Australia is of even lesser significance when compared to current litchi imports by the United States, given the expanding demand for this fruit.

Any litchi price declines that might result from this rule would be insignificant, especially if, as is likely, at least some litchi imports from Australia were to displace imports from other countries. Moreover, given that the agricultural seasons in the Southern Hemisphere are generally the opposite of those in the Northern Hemisphere, the proposed imports from Australia likely would not directly compete with U.S. litchi production.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow litchi fruit to be imported into the United States from Australia. If this proposed rule is adopted, State and local laws and regulations regarding litchi fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please

send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2009-0084. Please send a copy of your comments to: (1) Docket No. APHIS-2009-0084, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the fruits and vegetables regulations to allow, under certain conditions, the importation into the United States of commercial consignments of litchi fruit from Australia. The conditions for the importation of litchi fruit from Australia include requirements for pest exclusion at the production site, irradiation treatment, pest-excluding packinghouse procedures and port-of-entry inspections. The litchi would also be required to be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of Australia with an additional declaration confirming that the litchi had been produced in accordance with the proposed requirements. This action would allow for the importation of litchi fruit from Australia while continuing to provide protection against the introduction of injurious plant pests into the United States.

Implementing this rule will require the completion of phytosanitary certificates, compliance agreements, preclearance workplans, treatment records and trust fund agreements.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5455 hours per response.

Respondents: Foreign business and NPPO of Australia.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 11.

Estimated annual number of responses: 22.

Estimated total annual burden on respondents: 12 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new § 319.56-55 is added to read as follows:

§ 319.56-55 Litchi from Australia (including Tasmania).

Litchi (Litchi chinensis) with up to 5 millimeters of stem may be imported into the continental United States from Australia only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) Litchi must be grown in a production area that is registered with and monitored by the national plant protection organization (NPPO) of Australia.

(b) The litchi must be treated for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, with irradiation in accordance with § 305.9 of this chapter. Treatment must be conducted prior to importation of the fruits into the United States.

(c) Each shipment of litchi must be accompanied by a phytosanitary certificate of inspection issued by the NPPO of Australia with an additional declaration stating that the litchi were treated with irradiation as described in the Plant Protection and Quarantine Treatment Manual.

(d) In addition to meeting the labeling requirements in Part 305 of this chapter, cartons in which litchi are packed must be stamped “Not for importation into or distribution in FL.”

(e) The litchi may be imported in commercial consignments only.

Done in Washington, DC, this 19th day of December 2011 .

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

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